

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 623

Introduced by Senator Aanestad

February 22, 2005

An act to amend ~~Section 13263~~ Sections 13385 and 13385.1 of, and to add Section 13385.2 to, of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Aanestad. ~~Waste discharge requirements~~
Water quality: civil penalties.

Existing law, the Porter-Cologne Water Quality Control Act, ~~authorizes a California regional water quality control board to prescribe waste discharge requirements that implement any relevant water quality control plan and take into consideration specified factors~~ *imposes civil penalties for certain violations of the act relating to waste discharge requirements, including a mandatory minimum penalty of \$3,000 for serious violations, as defined, and for specified acts that are repeated 4 or more times in any period of 6 consecutive months, except as specified, including violations of an effluent limitation. The act also defines "serious violation" to include a failure to file a discharge monitoring report. The act requires that, at a minimum, liability be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.*

This bill would ~~make technical, nonsubstantive changes to that provision~~ *modify the repeated violation provision to apply to a period of 6 calendar months. The bill would modify that effluent limitation provision to include only violations of an effluent limitation for the same pollutant parameter. The bill would require those mandatory minimum penalties to be assessed within one year of the date of the violation. With regard to the discharge monitoring report provision, the bill would require a \$3,000 penalty to be assessed if the report is*

not submitted within 30 days following the deadline, as prescribed, and would require an additional penalty of \$3,000 for each complete period of 30 days following the date of receipt of notice from the regional board that the report has not been submitted as required. The bill would authorize a state board or a regional board to waive the imposition of, or reduce the amount of, the mandatory minimum penalty for certain violations, with or without the use of a supplemental environmental project or pollution prevention plan, if the state board or a regional board makes a determination that a waiver or reduction is justified, as specified. The bill would, for the purpose of reducing the amount of a penalty, exempt the state board or a regional board from the requirement of assessing liability at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 13263 of the Water Code is amended to~~
2 ~~read:~~
3 ~~13263. (a) The regional board, after any necessary hearing,~~
4 ~~shall prescribe requirements as to the nature of any proposed~~
5 ~~discharge, existing discharge, or material change in an existing~~
6 ~~discharge, except discharges into a community sewer system,~~
7 ~~with relation to the conditions existing in the disposal area or~~
8 ~~receiving waters upon, or into which, the discharge is made or~~
9 ~~proposed. The requirements shall implement any relevant water~~
10 ~~quality control plans that have been adopted, and shall take into~~
11 ~~consideration the beneficial uses to be protected, the water~~
12 ~~quality objectives reasonably required for that purpose, other~~
13 ~~waste discharges, the need to prevent nuisance, and the~~
14 ~~provisions of Section 13241.~~
15 ~~(b) A regional board, in prescribing requirements, need not~~
16 ~~authorize the utilization of the full waste assimilation capacities~~
17 ~~of the receiving waters.~~
18 ~~(c) The requirements may contain a time schedule, subject to~~
19 ~~revision in the discretion of the board.~~
20 ~~(d) The regional board may prescribe requirements although~~
21 ~~no discharge report has been filed.~~

1 ~~(e) Upon application by any affected person, or on its own~~
2 ~~motion, the regional board may review and revise requirements.~~
3 ~~All requirements shall be reviewed periodically.~~

4 ~~(f) The regional board shall notify, in writing, the person~~
5 ~~making or proposing the discharge or the change therein of the~~
6 ~~discharge requirements to be met. After receipt of the notice, the~~
7 ~~person so notified shall provide adequate means to meet the~~
8 ~~requirements.~~

9 ~~(g) No discharge of waste into the waters of the state, whether~~
10 ~~or not the discharge is made pursuant to waste discharge~~
11 ~~requirements, shall create a vested right to continue the~~
12 ~~discharge. All discharges of waste into waters of the state are~~
13 ~~privileges, not rights.~~

14 ~~(h) The regional board may incorporate the requirements~~
15 ~~prescribed pursuant to this section into a master recycling permit~~
16 ~~for either a supplier or distributor, or both, of recycled water.~~

17 ~~(i) The state board or a regional board may prescribe general~~
18 ~~waste discharge requirements for a category of discharges if the~~
19 ~~state board or that regional board finds or determines that all of~~
20 ~~the following criteria apply to the discharges in that category:~~

21 ~~(1) The discharges are produced by the same or similar~~
22 ~~operations.~~

23 ~~(2) The discharges involve the same or similar types of waste.~~

24 ~~(3) The discharges require the same or similar treatment~~
25 ~~standards.~~

26 ~~(4) The discharges are more appropriately regulated under~~
27 ~~general discharge requirements than individual discharge~~
28 ~~requirements.~~

29 ~~(j) The state board, after any necessary hearing, may prescribe~~
30 ~~waste discharge requirements in accordance with this section.~~

31 *SECTION 1. Section 13385 of the Water Code is amended to*
32 *read:*

33 13385. (a) Any person who violates any of the following
34 shall be liable civilly in accordance with this section:

35 (1) Section 13375 or 13376.

36 (2) Any waste discharge requirements or dredged or fill
37 material permit issued pursuant to this chapter or any water
38 quality certification issued pursuant to Section 13160.

39 (3) Any requirements established pursuant to Section 13383.

1 (4) Any order or prohibition issued pursuant to Section 13243
2 or Article 1 (commencing with Section 13300) of Chapter 5, if
3 the activity subject to the order or prohibition is subject to
4 regulation under this chapter.

5 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,
6 401, or 405 of the Clean Water Act, as amended.

7 (6) Any requirement imposed in a pretreatment program
8 approved pursuant to waste discharge requirements issued under
9 Section 13377 or approved pursuant to a permit issued by the
10 administrator.

11 (b) Civil liability may be imposed by the superior court in an
12 amount not to exceed the sum of both of the following:

13 (1) Twenty-five thousand dollars (\$25,000) for each day in
14 which the violation occurs.

15 (2) Where there is a discharge, any portion of which is not
16 susceptible to cleanup or is not cleaned up, and the volume
17 discharged but not cleaned up exceeds 1,000 gallons, an
18 additional liability not to exceed twenty-five dollars (\$25)
19 multiplied by the number of gallons by which the volume
20 discharged but not cleaned up exceeds 1,000 gallons.

21 The Attorney General, upon request of a regional board or the
22 state board, shall petition the superior court to impose the
23 liability.

24 (c) Civil liability may be imposed administratively by the state
25 board or a regional board pursuant to Article 2.5 (commencing
26 with Section 13323) of Chapter 5 in an amount not to exceed the
27 sum of both of the following:

28 (1) Ten thousand dollars (\$10,000) for each day in which the
29 violation occurs.

30 (2) Where there is a discharge, any portion of which is not
31 susceptible to cleanup or is not cleaned up, and the volume
32 discharged but not cleaned up exceeds 1,000 gallons, an
33 additional liability not to exceed ten dollars (\$10) multiplied by
34 the number of gallons by which the volume discharged but not
35 cleaned up exceeds 1,000 gallons.

36 (d) For purposes of subdivisions (b) and (c), the term
37 “discharge” includes any discharge to navigable waters of the
38 United States, any introduction of pollutants into a publicly
39 owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(3) *Penalties assessed pursuant to this subdivision shall be assessed within one year of the date of the violation.*

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive calendar months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation for the same pollutant parameter.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

~~(2) For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.~~

1 (2) *Penalties assessed pursuant to this subdivision shall be*
2 *assessed within one year of the date of the violation.*

3 (j) Subdivisions (h) and (i) do not apply to any of the
4 following:

5 (1) A violation caused by one or any combination of the
6 following:

7 (A) An act of war.

8 (B) An unanticipated, grave natural disaster or other natural
9 phenomenon of an exceptional, inevitable, and irresistible
10 character, the effects of which could not have been prevented or
11 avoided by the exercise of due care or foresight.

12 (C) An intentional act of a third party, the effects of which
13 could not have been prevented or avoided by the exercise of due
14 care or foresight.

15 (D) (i) The operation of a new or reconstructed wastewater
16 treatment unit during a defined period of adjusting or testing, not
17 to exceed 90 days for a wastewater treatment unit that relies on a
18 biological treatment process and not to exceed 30 days for any
19 other wastewater treatment unit, if all of the following
20 requirements are met:

21 (I) The discharger has submitted to the regional board, at least
22 30 days in advance of the operation, an operations plan that
23 describes the actions the discharger will take during the period of
24 adjusting and testing, including steps to prevent violations and
25 identifies the shortest reasonable time required for the period of
26 adjusting and testing, not to exceed 90 days for a wastewater
27 treatment unit that relies on a biological treatment process and
28 not to exceed 30 days for any other wastewater treatment unit.

29 (II) The regional board has not objected in writing to the
30 operations plan.

31 (III) The discharger demonstrates that the violations resulted
32 from the operation of the new or reconstructed wastewater
33 treatment unit and that the violations could not have reasonably
34 been avoided.

35 (IV) The discharger demonstrates compliance with the
36 operations plan.

37 (V) In the case of a reconstructed wastewater treatment unit,
38 the unit relies on a biological treatment process that is required to
39 be out of operation for at least 14 days in order to perform the
40 reconstruction, or the unit is required to be out of operation for at

1 least 14 days and, at the time of the reconstruction, the cost of
2 reconstructing the unit exceeds 50 percent of the cost of
3 replacing the wastewater treatment unit.

4 (ii) For the purposes of this section, “wastewater treatment
5 unit” means a component of a wastewater treatment plant that
6 performs a designated treatment function.

7 (2) (A) Except as provided in subparagraph (B), a violation of
8 an effluent limitation where the waste discharge is in compliance
9 with either a cease and desist order issued pursuant to Section
10 13301 or a time schedule order issued pursuant to Section 13300,
11 if all of the following requirements are met:

12 (i) The cease and desist order or time schedule order is issued
13 after January 1, 1995, but not later than July 1, 2000, specifies
14 the actions that the discharger is required to take in order to
15 correct the violations that would otherwise be subject to
16 subdivisions (h) and (i), and the date by which compliance is
17 required to be achieved and, if the final date by which
18 compliance is required to be achieved is later than one year from
19 the effective date of the cease and desist order or time schedule
20 order, specifies the interim requirements by which progress
21 towards compliance will be measured and the date by which the
22 discharger will be in compliance with each interim requirement.

23 (ii) The discharger has prepared and is implementing in a
24 timely and proper manner, or is required by the regional board to
25 prepare and implement, a pollution prevention plan that meets
26 the requirements of Section 13263.3.

27 (iii) The discharger demonstrates that it has carried out all
28 reasonable and immediately feasible actions to reduce
29 noncompliance with the waste discharge requirements applicable
30 to the waste discharge and the executive officer of the regional
31 board concurs with the demonstration.

32 (B) Subdivisions (h) and (i) shall become applicable to a waste
33 discharge on the date the waste discharge requirements
34 applicable to the waste discharge are revised and reissued
35 pursuant to Section 13380, unless the regional board does all of
36 the following on or before that date:

37 (i) Modifies the requirements of the cease and desist order or
38 time schedule order as may be necessary to make it fully
39 consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or Section 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

1 (ii) New methods for detecting or measuring a pollutant in the
2 waste discharge demonstrate that new or modified control
3 measures are necessary in order to comply with the effluent
4 limitation and the new or modified control measures cannot be
5 designed, installed, and put into operation within 30 calendar
6 days.

7 (iii) Unanticipated changes in the quality of the municipal or
8 industrial water supply available to the discharger are the cause
9 of unavoidable changes in the composition of the waste
10 discharge, the changes in the composition of the waste discharge
11 are the cause of the inability to comply with the effluent
12 limitation, no alternative water supply is reasonably available to
13 the discharger, and new or modified measures to control the
14 composition of the waste discharge cannot be designed, installed,
15 and put into operation within 30 calendar days.

16 (iv) The discharger is a publicly owned treatment works
17 located in Orange County that is unable to meet effluent
18 limitations for biological oxygen demand, suspended solids, or
19 both, because the publicly owned treatment works meets all of
20 the following criteria:

21 (I) Was previously operating under modified secondary
22 treatment requirements pursuant to Section 301(h) of the Clean
23 Water Act (33 U.S.C. Sec. 1311(h)).

24 (II) Did vote on July 17, 2002, not to apply for a renewal of
25 the modified secondary treatment requirements.

26 (III) Is in the process of upgrading its treatment facilities to
27 meet the secondary treatment standards required by Section
28 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.
29 1311(b)(1)(B)).

30 (C) The regional board establishes a time schedule for
31 bringing the waste discharge into compliance with the effluent
32 limitation that is as short as possible, taking into account the
33 technological, operational, and economic factors that affect the
34 design, development, and implementation of the control
35 measures that are necessary to comply with the effluent
36 limitation. For the purposes of this subdivision, the time schedule
37 may not exceed five years in length, except that the time
38 schedule may not exceed 10 years in length for the upgrade
39 described in subparagraph (B)(iv)(III). If the time schedule
40 exceeds one year from the effective date of the order, the

1 schedule shall include interim requirements and the dates for
2 their achievement. The interim requirements shall include both of
3 the following:

4 (i) Effluent limitations for the pollutant or pollutants of
5 concern.

6 (ii) Actions and milestones leading to compliance with the
7 effluent limitation.

8 (D) The discharger has prepared and is implementing in a
9 timely and proper manner, or is required by the regional board to
10 prepare and implement, a pollution prevention plan pursuant to
11 Section 13263.3.

12 (k) In lieu of assessing all or a portion of the mandatory
13 minimum penalties pursuant to subdivisions (h) and (i) against a
14 POTW serving a small community, as defined by subdivision (b)
15 of Section 79084, the state board or the regional board may elect
16 to require the POTW to spend an equivalent amount towards the
17 completion of a compliance project proposed by the POTW, if
18 the state or regional board finds all of the following:

19 (1) The compliance project is designed to correct the
20 violations within five years.

21 (2) The compliance project is in accordance with the
22 enforcement policy of the state board.

23 (3) The POTW has ~~demonstrated that it has sufficient funding~~
24 *prepared a financing plan* to complete the compliance project.

25 (l) (1) In lieu of assessing penalties pursuant to subdivision
26 (h) or (i), the state board or regional board, with the concurrence
27 of the discharger, may direct a portion of the penalty amount to
28 be expended on a supplemental environmental project in
29 accordance with the enforcement policy of the state board. If the
30 penalty amount exceeds fifteen thousand dollars (\$15,000), the
31 portion of the penalty amount that may be directed to be
32 expended on a supplemental environmental project may not
33 exceed fifteen thousand dollars (\$15,000) plus 50 percent of the
34 penalty amount that exceeds fifteen thousand dollars (\$15,000).

35 (2) For the purposes of this section, a “supplemental
36 environmental project” means an environmentally beneficial
37 project that a person agrees to undertake, with the approval of the
38 regional board, that would not be undertaken in the absence of an
39 enforcement action under this section.

1 (3) This subdivision applies to the imposition of penalties
2 pursuant to subdivision (h) or (i) on or after January 1, 2003,
3 without regard to the date on which the violation occurs.

4 (m) The Attorney General, upon request of a regional board or
5 the state board, shall petition the appropriate court to collect any
6 liability or penalty imposed pursuant to this section. Any person
7 who fails to pay on a timely basis any liability or penalty
8 imposed under this section shall be required to pay, in addition to
9 that liability or penalty, interest, attorneys' fees, costs for
10 collection proceedings, and a quarterly nonpayment penalty for
11 each quarter during which the failure to pay persists. The
12 nonpayment penalty shall be in an amount equal to 20 percent of
13 the aggregate amount of the person's penalty and nonpayment
14 penalties that are unpaid as of the beginning of the quarter.

15 (n) (1) Subject to paragraph (2), funds collected pursuant to
16 this section shall be deposited in the State Water Pollution
17 Cleanup and Abatement Account.

18 (2) (A) Notwithstanding any other provision of law, moneys
19 collected for a violation of a water quality certification in
20 accordance with paragraph (2) of subdivision (a) or for a
21 violation of Section 401 of the Clean Water Act (33 U.S.C. Sec.
22 1341) in accordance with paragraph (5) of subdivision (a) shall
23 be deposited in the Waste Discharge Permit Fund and separately
24 accounted for in that fund.

25 (B) The funds described in subparagraph (A) shall be
26 expended by the state board, upon appropriation by the
27 Legislature, to assist regional boards, and other public agencies
28 with authority to clean up waste or abate the effects of the waste,
29 in cleaning up or abating the effects of the waste on waters of the
30 state or for the purposes authorized in Section 13443.

31 (o) The state board shall continuously report and update
32 information on its Web site, but at a minimum, annually on or
33 before January 1, regarding its enforcement activities. The
34 information shall include all of the following:

35 (1) A compilation of the number of violations of waste
36 discharge requirements in the previous calendar year, including
37 stormwater enforcement violations.

38 (2) A record of the formal and informal compliance and
39 enforcement actions taken for each violation, including
40 stormwater enforcement actions.

1 (3) An analysis of the effectiveness of current enforcement
2 policies, including mandatory minimum penalties.

3 (p) The amendments made to subdivisions (f), (h), (i) and (j)
4 during the second year of the 2001–02 Regular Session apply
5 only to violations that occur on or after January 1, 2003.

6 *SEC. 2. Section 13385.1 of the Water Code is amended to*
7 *read:*

8 13385.1. (a) (1) For the purposes of subdivision (h) of
9 Section 13385, a “serious violation” also means a failure to file a
10 discharge monitoring report required pursuant to Section 13383
11 ~~for each complete period of~~ *A penalty of three thousand dollars*
12 *(\$3,000) shall be assessed if the report is not submitted within 30*
13 *days following the deadline for submitting the report, if the*
14 *report is designed to ensure compliance with limitations*
15 *contained in waste discharge requirements that contain effluent*
16 *limitations. An additional penalty of three thousand dollars*
17 *(\$3,000) shall be assessed for each complete period of 30 days*
18 *following the date of receipt of notice from the regional board*
19 *that the report has not been submitted as required.*

20 (2) Paragraph (1) applies only to violations that occur on or
21 after January 1, 2004.

22 (b) (1) Notwithstanding any other provision of law, moneys
23 collected pursuant to this section for a failure to timely file a
24 report, as described in subdivision (a), shall be deposited in the
25 Waste Discharge Permit Fund and separately accounted for in
26 that fund.

27 (2) The funds described in paragraph (1) shall be expended by
28 the state board, upon appropriation by the Legislature, to assist
29 regional boards, and other public agencies with authority to clean
30 up waste or abate the effects of the waste, in responding to
31 significant water pollution problems.

32 (c) For the purposes of this section, paragraph (2) of
33 subdivision (f) of Section 13385, and subdivisions (h), (i), and (j)
34 of Section 13385 only, “effluent limitation” means a numeric or
35 numerically expressed narrative restriction on the quantity,
36 discharge rate, concentration, or toxicity units of a pollutant or
37 pollutants authorized to be discharged from a location that is
38 specified in waste discharge requirements. An effluent limitation
39 may be final or interim, and may be expressed as a prohibition.
40 An effluent limitation, for those purposes, does not include a

1 receiving water limitation, a compliance schedule, or a best
2 management practice.

3 *SEC. 3. Section 13385.2 is added to the Water Code, to read:*

4 *13385.2. (a) The state board or a regional board may waive*
5 *the imposition of, or reduce the amount of, the penalty for any*
6 *violation described in subdivision (h) or (i) of Section 13385,*
7 *with or without the use of a supplemental environmental project*
8 *or pollution prevention plan, if the state board or a regional*
9 *board determines, by a two-thirds vote of all of its members, that*
10 *a waiver or reduction is justified, based upon one or more of the*
11 *factors specified in subdivision (e) of Section 13385. In making*
12 *that determination, the state board or a regional board shall*
13 *identify the factor or factors and the supporting facts underlying*
14 *its determination.*

15 *(b) Notwithstanding subdivision (e) of Section 13385, for the*
16 *purposes of reducing the amount of a penalty pursuant to this*
17 *subdivision, the state board or a regional board is not required*
18 *to assess liability at a level that recovers the economic benefit, if*
19 *any, derived from the acts that constitute the violation.*